

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

UNICARE LIFE AND HEALTH)	Civil Action No. 04-CV-30009-KPN
INSURANCE COMPANY)	
)	
Plaintiff-Stakeholder)	
)	
v.)	
)	
DONALD R. MARTEL, MICHELLE)	
MARTEL LANDRY)	
)	
Defendants-Claimants)	
)	

PLAINTIFF-STAKEHOLDER UNICARE LIFE AND HEALTH INSURANCE
COMPANY'S ASSENTED TO EMERGENCY MOTION TO
CONTINUE SCHEDULING CONFERENCE

Plaintiff-Stakeholder Unicare Life and Health Insurance Company ("Unicare") hereby moves this Court to continue the scheduling conference set for June 4, 2004, for the following reasons.

STATEMENT OF THE FACTS

1. Unicare filed this interpleader action in order for the Court to determine the rights of the Claimants, Donald Martel, and Michelle Martel Landry with respect to the Death Benefit from a group life insurance policy issued by Unicare ("The Policy") to Massachusetts Mutual Life Insurance and covering the life of Paul Martel.
2. The total Death Benefit from the Policy in dispute between the Claimants has been paid into the Court in the amount of \$4774.15.
3. On April 29, 2004, the Court issue an electronic notice setting June 4, 2004 as the date for the parties' Initial Scheduling Conference.

4 Acting on Unicare's motion, on May 7, 2004, this Court entered a Notice of Default against Defendant-Claimant Michelle Martel Landry due to her failure to answer or otherwise defend the suit.

5. On May 19, 2004, Unicare's Counsel received an electronic notification from the Court stating: "Notice of Scheduling Conference set for 6/23/04 at 9:30 A.M. in Courtroom 3."

6. In order to obtain Default Judgment, on May 20, 2004, Unicare filed its Motion for Entry of Default Judgment. As of today's date, the Court has not acted on this motion.

7. On June 3, 2004, Unicare's Counsel received a call from Mary Finn from the Court stating that the Scheduling Conference was still scheduled for June 4, 2004 and that the May 19, 2004 electronic notification received by Unicare's Counsel pertained to another case.

ARGUMENT

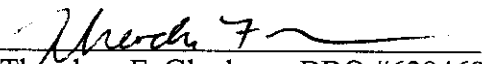
The Court should continue the Scheduling Conference for a sufficient period of time so that it can act on Unicare's Motion for Default Judgment. In the event that the Court enters Default Judgment against Defendant –Claimant Michelle Landry, the dispute as to the proper beneficiary of the Death Benefit will have been conclusively determined and there will be no need to conduct the conference. Additionally, continuing the conference until that time will have the practical effect of saving the parties' resources in drafting a Joint Statement. This is extremely important in this interpleader case where the value of the stake is extremely small and in light of Unicare's right to seek the award of its attorney's fees in maintaining this suit. The general practice is that 'an interpleader

fee is usually awarded out of the fund to compensate a totally disinterested stakeholder who has been, by reason of the possession of the fund, subjected to competing claims through no fault of his own." Foxborough Savings Bank v. Petrosian, 84 F. Supp. 2d 172 (D. Mass. 1999)(Keeton, J.). See, also, Smith J. and Zobel, H. 7 Mass. Prac. Rules § 22.5.

Additionally, the Court should continue the Scheduling Conference in this case due to Counsel's legitimate confusion as to the date of the Scheduling Conference due to the Court's erroneous electronic notification of May 19, 2004, a true copy of which is attached as Exhibit 1. For all of these reasons, Unicare requests that this Court continue the Scheduling Conference from June 3, 2004, until after it has ruled on its Motion for Default Judgment. In the alternative, Unicare seeks a one month continuance of the Scheduling Conference so as to permit the parties the opportunity to submit their Joint Statements.

Respectfully Submitted,
Plaintiff-Stakeholder Unicare Life and
Health Insurance Company,
By, Its Attorneys:

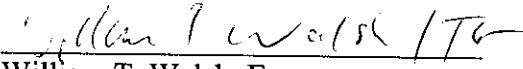
CREVIER & RYAN, LLP.


Theodore F. Glockner, BBO #629469
1500 Main Street, Suite 2020
Springfield, MA 01115-5532
(413) 787-2400

Assented to By:

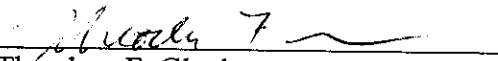
The Defendant-Claimant
Donald R. Martel

By His Attorney


William T. Walsh, Esq.
73 State Street, Suite 200
Springfield, MA 01103
BBO No. 515300
(413) 746-9500

L.R. 7.1 (A) (2) CERTIFICATE

I certify that prior to filing the present motion I conferred in good faith with all counsel of record in an attempt to resolve or narrow the issues.


Theodore F. Glockner

CERTIFICATE OF SERVICE

I hereby certify that I served a true copy of the foregoing on all parties who have appeared in this action via first class mail postage pre-paid this 3rd day of June, 2004.


Theodore F. Glockner

From: <ECFnotice@mad.uscourts.gov>
To: <CourtCopy@mad.uscourts.gov>
Date: 5/19/04 10:34AM
Subject: Activity in Case 3:04-cv-30009-KPN Unicare Life and Health Insurance Company v. Martel et al "Notice of Scheduling Conference"

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United States District Court
District of Massachusetts

Notice of Electronic Filing

The following transaction was received from Finn, Mary entered on 5/19/2004 at 10:29 AM EDT and filed on 5/19/2004

Case Name: Unicare Life and Health Insurance Company v. Martel et al
Case Number: 3:04-cv-30009 <https://ecf.mad.uscourts.gov/cgi-bin/DktRpt.pl?90115>

Document Number: 10

Copy the URL address on the line below into the location bar of your Web browser to view the document:
https://ecf.mad.uscourts.gov/cgi-bin/show_case_doc?10,90115,,39276091,

Docket Text:

NOTICE of Scheduling Conference Scheduling Conference set for 6/23/2004 at 09:30 AM in Courtroom 3 before Magistrate Kenneth P. Neiman; cc/cl. (Finn, Mary)

The following document(s) are associated with this transaction:

Document description: Main Document

Original filename: yes

Electronic document Stamp:

[STAMP dcecfStamp_ID=1029851931 [Date=5/19/2004] [FileNumber=524874-0]

[0baae56b34e902f2cf5af59fe8e0047a4b3fab56ab0ff256d97a9c2dfaa76f5b4cf7010455f0da83884a6c2f18d7981304c33eeaeef3195be5cf365bf09933cd]]

3:04-cv-30009 Notice will be electronically mailed to:

David B. Crevier

dcrevier@crevierandryan.com

3:04-cv-30009 Notice will not be electronically mailed to:

William T. Walsh

73 State Street, Suite 200

Springfield, MA 01103